

Tran (Migration) [2023] AATA 1208 (9 February 2023)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mrs Thi Hanh Tran
VISA APPLICANT:	Mr Van Quan Nguyen
REPRESENTATIVE:	Mr Huu Loc Nguyen (MARN: 1795573) (at hearing) Ms Jennifer Loc Nguyen (MARN: 2117711) (post hearing)
CASE NUMBER:	1835771
DIBP REFERENCE(S):	BCC2018/1298412
MEMBER:	Brygyda Maiden
DATE:	9 February 2023
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the visa applicant a Partner (Provisional) (Class UF) visa.

Statement made on 09 February 2023 at 11:11pm

CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine spousal relationship – financial aspects – nature of the household – social aspects – nature of the commitment – decision under review affirmed

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), r 1.15A; Schedule 2, cls 309.211, 309.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 29 November 2018 to refuse to grant the visa applicant a Partner (Provisional) (Class UF) under s 65 of the *Migration Act 1958* (Cth) (the "Act").
3. The visa applicant is a Vietnamese national and applied for the visa on 19 March 2018 based on his relationship with his sponsor, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the "Regulations"). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
4. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl 309.211 as the delegate considered that there was insufficient information and evidence to indicate the visa applicant was the spouse as defined under s 5F of the Act of the review applicant.
5. In the application for review to the Tribunal, which was lodged on 5 December 2018, the review applicant attached a copy of the notification and decision from the Department.
6. On 27 October 2022, the Tribunal wrote to the review applicant requesting further information and supporting evidence and gave examples of the types of evidence that could be provided to support the circumstances of the relationship in accordance with reg 1.15A of the Regulations.
7. On 10 November 2022, the review applicant (through her representative) submitted documents which were primarily photographs, tickets, and Viber chat records. Concerned about the paucity of the documentation submitted, the Tribunal again wrote to the review applicant on 29 November 2022 requesting information and again setting out a guide of the types of evidence and information that could be provided. Further documentation was provided by the review applicant through her representative.
8. On 11 December 2022, the representative wrote to the Tribunal indicating that the review applicant was currently living with the visa applicant in Vietnam and requested the hearing be conducted virtually by MS Teams which the Tribunal agreed to.
9. The review applicant appeared before the Tribunal by video conference on 17 January 2023, to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant and from one of the visa applicant's daughters, Ms Hong Vi Linh Nguyen (the "Ms Nguyen").
10. At the commencement of the hearing the Tribunal made clear that the parties had promised to tell the truth, and if they were not sure about an answer or could not recall then to tell the Tribunal that. The Tribunal requested that the parties do not guess or tell the Tribunal things they think may help the review as if it is not consistent with other information before the Tribunal it may affect the Tribunal's view about whether the truth is being told. If the Tribunal doubts that a party is telling the truth in relation to one matter it may cause the Tribunal to doubt whether the truth is being told in other matters, which is called credibility and may affect the weight the Tribunal can give to the evidence.

11. The review applicant was represented in relation to the review. The Tribunal was assisted by an interpreter in the Vietnamese and English languages. After the hearing on 30 January 2023, the Tribunal was advised that the review applicant had appointed a new representative.
12. On 31 January 2023, the representative provided submissions in relation to the concerns the Tribunal had raised at the end of the hearing. The Tribunal notes, that it raised numerous concerns in relation to the evidence at the end of the hearing and the submissions do not discuss many of the concerns that were raised.
13. For the following reasons, the Tribunal has concluded that the matter under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

14. The issue in the present case is whether the visa applicant is the spouse (as defined under s 5F of the Act) of the review applicant for the purposes of cls 309.211(2) and 309.221 of the Regulations.

Whether the parties are in a spouse or de facto relationship

15. Clauses 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an Australian citizen. A copy of the bio pages of the review applicant's Australian passport and Australian citizenship certificate which indicates that on 11 September 2014 that she became an Australian citizen are located on the Department file.
16. "Spouse" is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s 5F(2)(a) - (d). In forming an opinion about these matters, regard must be had to all the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in reg 1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in reg 1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

17. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The visa applicant's relationship statement dated 20 September 2018, indicates that the review applicant has previously been married three times, in:
 - a. 1980 she was married to Phan Bang Thang until his death in an accident in 1985;
 - b. 1988 she was married to Nguyen Viet Tu until they divorced in 2005;

- c. 2010 she was married to Vo Van Duc until they divorced in 2016. This is consistent with the Department file which contains a copy of the *Family Law Act 1975* divorce order between the review applicant and Mr Van Duc indicating that the marriage occurred on 15 May 2010 and was terminated on 12 September 2016.
- 18. The visa applicant's relationship statement dated 20 September 2018, also indicates that the review applicant is the older sister of the visa applicant's ex-wife (Ms Tran Thi Nhu Hoa), whom the visa applicant separated from at the end of 2015 and divorced on 4 April 2016. The Department file contains a translated copy of the People's Court of District 12 Ho Chi Minh City decision dated 4 April 2016 on recognition of divorce [sic] on mutual consent of the visa applicant and Ms Tran Thi Nhu Hoa. The divorce decision indicates that there were three children from that marriage:
 - a. Nguyen Thi Dieu Hong born in 1990;
 - b. Ms Nguyen born in 1995; and
 - c. Nguyen Hong Khan Vy born in 2007 that the visa applicant has right of custody of until her maturity age.
- 19. The Department file also contains a translated copy of the Socialist Republic of Vietnam marriage certificate which indicates that the review applicant's and visa applicant's marriage was registered on 13 February 2018.
- 20. The review applicant testified that all the parties' respective children attended the parties' wedding. On query by the Tribunal if even the review applicant's children attended, the review applicant changed her evidence and stated that only her daughter who lives in Vietnam attended the wedding party, and her other two daughters who live in Australia could not make it. The Tribunal queried why the review applicant would say that all her children and her husband's children attended the wedding, and the review applicant responded that she had made a mistake, was sorry, and from her side only her daughter from Vietnam attended. She then stated that on the visa applicant's side, his eldest two daughters could not attend and only the youngest attended. The Tribunal reiterated that the question it had asked was did the review applicant's and visa applicant's children attend the parties' wedding to which the review applicant answered "yes". Only on query by the Tribunal did the review applicant ultimately confirm that only two of the parties' six children attended the parties' wedding. The review applicant apologised and again reiterated that only one child from her side and the visa applicant's side attended. The Tribunal made it clear that was very different from six in total, and that the Tribunal had credibility concerns about her evidence. The review applicant indicated that she would answer the questions carefully. The Tribunal had concerns about the credibility of the review applicant's evidence.
- 21. The review applicant gave evidence that she was sure that she and the visa applicant would live together until the end of their lives. The Tribunal asked whether the review applicant had promised when she had married her three previous husbands that she would be with them until the end of their lives also. The review applicant stated that those marriages were when she was young, her parents thought those husbands would suit her and she did not promise to live with them until the end of her life. Although the Tribunal finds this explanation unusual, the Tribunal gives this neutral weight.
- 22. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s 5F(2)(a). However, this evidence alone does not in the Tribunal's view demonstrate a mutual commitment to a shared life together or a relationship that is genuine and continuing.

23.

Are the other requirements for a spousal relationship met?

24. *Financial aspects of the relationship*

25. The Tribunal has considered the financial aspects of the relationship, including any joint ownership of real estate or other major assets; joint liabilities; extent of any pooling of financial resources; whether one person in the relationship owes any legal obligations in respect of the other and the basis of any sharing of day-to-day household expenses.

26. The review applicant gave evidence that the visa applicant used to run a business, and he is no longer doing that, and the parties live on rental payments. Both parties have properties which generate rental which they live off. The visa applicant also works as a supervisor on a construction site. The visa applicant gave generally consistent evidence, except he stated that he is a tradesperson and the visa applicant does housework and cares for the children. The Tribunal gives this neutral weight.

27. *Do the parties have any joint ownership of real estate or other major assets?*

28. The Tribunal is satisfied that the parties do not have any joint ownership of real estate or other major assets at the time of application and time of decision.

29. *Do the parties have any joint liabilities?*

30. The Tribunal is satisfied that the parties do not have any joint liabilities together at the time of application and time of decision.

31. *To what extent is there any pooling of financial resources?*

32. The review applicant gave evidence that the parties do not have any joint bank accounts, but the parties were trying to save money to buy a house for when the visa applicant comes to live in Australia. The review applicant testified that the parties do not put their money in the bank and instead, had lent several hundred million VND to their siblings and when the parties require the money back they will ask for it. The visa applicant's evidence was inconsistent. He stated that the parties had saved 10 billion VND. On raising the inconsistency with the visa applicant, the visa applicant confirmed that 10 billion VND was the correct amount. At the end of the hearing the Tribunal again raised the inconsistencies of the parties' evidence and stated that the Tribunal was concerned that the parties were not saving for anything at all. The review applicant then responded that they have some savings but the parties allow their relatives to borrow the money as they have a business, and if the visa applicant can come to Australia the parties would get that money back. She claimed to never have said that she only had several million VND. She further clarified that the visa applicant has a rental property and when the parties go to Australia they will buy another house. Then, in relation to the parties' savings, she could not remember exactly how much they had.

33. The representative in the post-hearing submission dated 31 January 2023, stated that the money saved between the parties was not something that has been discussed properly as they both have their own properties and the visa applicant has lent money out to many friends and family. However, the Tribunal does not accept this, as the Tribunal asked whether the review applicant and the visa applicant were saving for anything, and if it had not been discussed, then that was the answer that ought to have been provided. Additionally, it was the review applicant that volunteered that the parties did not keep the money in the bank and they lent the money out to siblings. This lending of the money was

put to the visa applicant in the context of the inconsistency in the parties' evidence as to the amount that they have saved. For these reasons, the Tribunal does not accept this evidence and gives it negative weight because:

- a. it is reasonable to assume that if parties are saving for something in particular that they are generally consistent on the amount of savings that they have;
- b. although the Tribunal does not expect necessarily that the parties know the saved amount to be exact, the Tribunal considers it reasonable to expect the approximations to be broadly consistent; and
- c. the lack of consistency indicates to the Tribunal that either the parties have no savings together or if they do, they are not saving for anything in particular which would be an explanation as to why the parties' answers differed so much.

34. *Does one person in the relationship owe any legal obligations in respect of the other?*

35. There is no evidence to suggest that one party owes any legal obligations in respect of the other either at the time of application or time of decision.

36. *What is the basis of any sharing of day-to-day household expenses?*

37. The review applicant testified that the visa applicant gives his income to her for saving and she controls and manages the money. The visa applicant pays the bills, but to do so, he has to ask the review applicant for the money that he has given her to pay the bills. The review applicant stated that she pays for food and groceries. The Tribunal mentioned that there had been no documents submitted to indicate the payment of bills or the sharing of finances to which the review applicant responded that when the visa applicant works he gives her all the money from work, it is their money. The Tribunal gives this some weight.
38. At the time of application, the parties had no joint ownership of real estate or other major assets, no joint liabilities, there was no pooling of financial resources, no party owed a legal obligation in respect of the other and there was no sharing of day-to-day household expenses. The decision record indicates that invoices were submitted in relation to the parties' wedding expenses from 2018 and shopping invoices in separate names from 2016. The Tribunal gives these a small amount of weight. At that time, the parties were living in separate countries, and the Tribunal accepts that there may be difficulty in terms of financial aspects of the relationship, therefore the Tribunal gives neutral weight to this matter in its consideration of this review.
39. At the time of decision, the parties have no joint ownership of real estate or other major assets, no joint liabilities and one party does not owe any legal obligation in respect of the other. The only evidence in relation to the pooling of financial resources was the parties' oral evidence that they were saving for a house for when the visa applicant came to Australia (their savings were loaned to siblings until the money needed to be returned rather than keeping it in the bank). However, the parties were not consistent on the amount saved which is inconsistent with the parties saving for something in particular. The Tribunal gave this negative weight. There is oral evidence suggesting that the parties' share day-to-day household expenses which the Tribunal afforded some weight to. On balance since the parties have indicated that they have lived together since March 2020, the financial aspects of the relationship are not indicative of the parties having a shared life together or being in a genuine and continuing relationship.

40. *Nature of the household*

41. The Tribunal has considered evidence of the nature of the parties' household, including any joint responsibility for the care and support of children, the living arrangements of the persons and any sharing of the responsibility of housework.

42. *Is there any joint responsibility for the care and support of children?*

43. There is no evidence that the parties have any children together.
44. At the time of application according to the visa applicant's relationship statement dated 20 September 2018, Ms Nguyen was at that stage in Australia on a student visa living with the review applicant and her daughter's family. The review applicant helped the visa applicant a lot in taking care of and looking after the Ms Nguyen (his daughter). According to Ms Nguyen's evidence, she was living in Melbourne from 2016 until March 2022. The Tribunal only gives this evidence a small amount of weight because:
- a. at the time of application, the review applicant testified that she was living with her daughter in Australia, at her daughter's place together with her son-in-law, two granddaughters and Ms Nguyen; and
 - b. the review applicant is Ms Nguyen's aunt (Ms Nguyen is the review applicant's sister's daughter) and therefore even if the review applicant was looking after Ms Nguyen, her niece, this is not necessarily indicative of the parties being in a spousal relationship as Ms Nguyen is the review applicant's relative in her own right.

45. At the time of decision, the review applicant testified that she has three daughters all of which are married, and the parties do not support them. The visa applicant's oldest daughters support themselves, and the parties only support the visa applicant's youngest daughter together who is a minor. The review applicant indicates that her sister (the child's mother and the visa applicant's ex-wife) contributes some money to look after her daughter, but the review applicant indicated that she does not need the money because she is financially sufficient. The visa applicant stated that the review applicant cares for the children, and cooks for both daughters that live with the parties. Because the review applicant is also the child's aunt, the Tribunal does not consider that the evidence of the review applicant caring and cooking for her nieces / stepdaughters, to be indicative of the parties being in a genuine and continuing relationship as there is another strong reason in that it may well just be indicative of the review applicant being the aunt of the visa applicant's children and therefore, the Tribunal only gives this some weight.

46. The review applicant gave evidence that the visa applicant's youngest daughter was 16 which is one year older than her birth date. The representative's submissions dated 31 January 2023 indicate that "*...in Vietnam and like many other Asian countries, on the day of birth, would be considered as one year old; the time spent in the womb counts as the first year of their life (despite it being nine months). This is very common in East Asian countries as they follow the Lunar Calendar year which in effect, means that a year is added to a person's age on New Year's Day of the Lunar Calendar*". The Tribunal accepts these submissions, and does not give the discrepancy in age any negative weight.

47. *What are the living arrangements of the persons?*

48. At the time of application, the parties were living in separate countries – in Australia and Vietnam. The review applicant stated that at the time of the visa application she lived with her daughter at her daughter's place together with her son-in-law, two granddaughters and

her husband's middle daughter in Australia. Ms Nguyen confirmed these living arrangements in oral evidence and indicated that the place they lived was Thomastown, Melbourne and that she lived in Melbourne from 2016 to 2022. The parties gave consistent evidence that the visa applicant was living with his mother and youngest daughter at his mother's house.

49. The visa applicant gave inconsistent evidence pertaining to the review applicant's living arrangements. He stated that the review applicant was living in Thomastown in Melbourne, with her two daughters. The Tribunal mentioned the inconsistency and that it had concerns about the visa applicant's evidence. After the Tribunal pointed out the details of the inconsistency the visa applicant changed his evidence to state that the review applicant lived with her daughter, son-in-law, their two children and his daughter Linh also stayed there. The Tribunal pointed out that this was inconsistent with what he had said before.
50. The review applicant gave oral evidence that at the time of decision she currently lives with the visa applicant, her mother-in-law and two of his daughters. This was consistent with Ms Nguyen's oral evidence. The Tribunal gives this some weight.

51. *Is there sharing of the responsibility of housework?*

52. Given the parties did not live together at the time of application the Tribunal accepts that opportunities to share housework would have been limited, therefore gives this neutral weight.
53. At the time of decision the parties have been living together since March 2022. The review applicant gave evidence that the visa applicant grows flowers, has a bird in a cage and takes her to go shopping or to the market; her main job is to cook the main meal. The visa applicant has also indicated in his evidence that the review applicant does housework, looks after the house and cares for the children. Later in the hearing both parties gave consistent evidence that the review applicant helps with meal preparation and both parties do the gardening together. From the evidence, it appears that the bulk of the housework rests with the review applicant with the visa applicant assisting with food preparation and both parties doing the gardening. Given that there is evidence that the visa applicant is still working (and the review applicant is not) it is not necessarily unreasonable that the bulk of the household be assumed by the review applicant. The Tribunal gives this a small amount of weight.
54. At the time of application in respect of the nature of the household, there is a small amount of evidence in relation to the joint care or support of another child (Ms Nguyen). The parties were generally living in separate countries with the review applicant living at her daughter's place in Melbourne with her son-in-law, two grandchildren and Ms Nguyen. The Tribunal notes that the visa applicant gave evidence which was inconsistent with the review applicant as to the review applicant's living arrangements. The visa applicant was living in Vietnam with his mother and his youngest daughter. The Tribunal notes that it was difficult for the parties to share the responsibility for housework as for the most part, the parties lived in separate countries. On balance, as the parties lived in separate countries and there was not an opportunity to share a household, because of that the Tribunal would normally give this matter neutral weight. However, because there was inconsistent evidence as to the review applicant's living arrangements, which it would be reasonable for a spouse to know, the Tribunal finds this matter on balance does not support the parties being in a genuine and continuing relationship.
55. At the time of decision, there is some evidence that the review applicant is looking after at least one of the visa applicant's children, however, because the review applicant is the visa applicant's children's aunt, the care for the children is not necessarily indicative of being in a spousal relationship with the visa applicant and may well be reflective of being the children's aunt. The parties claim to have been living together since March 2020 with the visa

applicant's mother and two of the visa applicant's daughters (one, Ms Nguyen, who returned to Vietnam in 2022 and the other who is a minor). Most of the housework is not shared between the parties with the housework seeming to be the responsibility of the review applicant with the visa applicant assisting with food preparation and both parties doing the gardening. On balance there was some evidence to support the nature of the household.

56. *Social aspects of the relationship*

57. The Tribunal has considered evidence of the social aspects of the relationship, including whether the persons represent themselves to other people as being married to each other, the opinion of the persons' friends and acquaintances about the nature of the relationship, and any basis on which the persons plan and undertake joint social activities.

58. *Do the persons represent themselves to other people as being married to each other?*

59. The review applicant submitted photographs of the wedding ceremony on 6 February 2018. The pictures show the parties in wedding attire in front of wedding guests. The review applicant's statement of relationship dated 20 September 2018 indicates that 54 guests attended the wedding though it is not clear from the photographs who the individuals are. However, the below statements indicate that family and friends attended the wedding and that the parties continue to represent themselves to others as being married.
60. The Department file contains a translated copy of the People's Committee Ho Chi Minh City Department of Justice, justice record number two, dated 27 February 2018 that the review applicant is the wife of the visa applicant.
61. At the time of application and time of decision (by way of the statements discussed below), there is evidence that the parties represent themselves to other people as being married to each other, and the Tribunal affords this some weight.

62. *What is the opinion of the persons' friends and acquaintances about the nature of the relationship?*

63. The review applicant submitted a number of translated witness statements from:
- a. Ms Tran Nhu My, dated 21 November 2022, who is the visa applicant's younger sister and has known the review applicant for 30 years. She states that the parties were married on 6 February 2018 at the Royal Centre restaurant and confirms that the review applicant has been in Vietnam since 17 March 2020, and she is now taking care of the visa applicant. Ms My indicates that the parties have visited her house often for small parties and eating and drinking. They have recently been living with the visa applicant's three daughters. She states that they both get along well, can rely on each other to take care of each other in their old age, live happily sharing housework and taking care of each other with warm family meals. Ms My states everyone in her family congratulates them and hopes they can hold hands for the rest of their lives.

64. There are some inconsistencies with Ms My's statement and the oral evidence given by the parties. The parties' testimony was consistent in that they were currently living with two of the visa applicant's daughters, with the eldest of his three daughters living with his ex-wife which is inconsistent with Ms My's evidence which states that the parties are living with the visa applicant's three daughters. Additionally, the visa applicant testified that the

review applicant does the housework which is inconsistent with Ms My's evidence that the housework is shared. The Tribunal has concerns with these elements of Ms My's statement, but the Tribunal accepts that the statement does provide a small amount of evidence about the nature of the parties' relationship and that the parties represent themselves to others as being married.

- a. Mr Nguyen Xuan Thu dated 21 November 2022, who is the younger brother of the visa applicant, and has known the review applicant for nearly 30 years but not closely. Around 2016 he became aware of the visa applicant's love for the review applicant. Mr Thu was quite surprised as the review applicant is the older sister of the visa applicant's ex-wife. He states that the review applicant is extremely gentle and courageous and loves the visa applicant and his children, whilst the visa applicant is devoted to the review applicant and her children. The parties are very happy together and love and care for each other. He also attended the parties' wedding at Royal Centre restaurant which took place with the blessing of friends and family. From 2020 the review applicant has stayed in Vietnam with the visa applicant and the parties have lived together. Mr Thu together with the parties gathered at his mother's house to decorate rooms and have meals together. He states that the review applicant cannot stay in Vietnam because of her work and life in Australia.

65. The review applicant gave evidence inconsistent with Mr Thu's statement which the Tribunal brought to the review applicant's attention. The review applicant's oral evidence was that when she first came to Australia in 2010 she worked for a company and packed vegetables for three years and then she had back pain and couldn't stay there any longer. When the Tribunal asked the review applicant why Mr Thu's statement would say that she could not stay in Vietnam anymore because of her work and life in Australia, when she did not have a job in Australia, she answered that she had a few friends with the same name as Mr Thu. She then stated it was 2014 that she had the back pain and could not work anymore and went to study an English course. The Tribunal raised the inconsistency and credibility concerns with Mr Thu's statement and asked whether the review applicant had read Mr Thu's statement prior to submitting it to the Tribunal as there was a Vietnamese and translated copy. The review applicant stated that she did not look at them carefully and did not work in Australia, so she did not need to rush back to Australia. The Tribunal made apparent that it was going to reduce the weight of the statement due to the credibility concerns and the inconsistency in the evidence. As Mr Thu's statement gives little evidence as to the nature of the parties' relationship and incorrect evidence as to the review applicant's work arrangements, it indicates that Mr Thu does not know the review applicant well and the Tribunal affords it little weight, however, notes that it does provide evidence that the parties represent themselves to others as being married.

- a. Tran Chi Dung dated 14 November 2022, who is a childhood friend of the visa applicant. He has known the review applicant since 2016 when the parties started falling in love. Mr Dung states that the review applicant has often flown between Australia and Vietnam to visit the visa applicant and his children and the parties have travelled together to many places. Mr Dung has been out for coffee with the parties and seen how they cared and loved each other very affectionately and attended their wedding in 2018. He further states that the review applicant has been in Vietnam "more often" to take care of the visa applicant and his three daughters like her own children. He

believes their love is sincere as they have been married for five years and never raised their voices at each other.

66. Mr Dung's statement is also consistent with the parties' evidence as to the parties' living arrangements in Vietnam. Only two of the visa applicant's daughters reside with him and the other lives with the child's mother. There is little information as to the nature of the parties' relationship, as the Tribunal gives this little weight. The Tribunal notes that it does provide evidence that the parties represent themselves to others as being married.

- a. Nguyen Thi My Phuong, dated 24 November 2022, has been a friend of the visa applicant for about 30 years and they have also been neighbours. After the parties officially started their relationship the parties invited her and a few friends to introduce the review applicant. According to Ms Phuong, it has been more than 10 times that the review applicant has returned to Vietnam, and every time she returns, they have had a meal to welcome her back. Ms Phuong attended the parties' wedding ceremony on 6 February 2018 at the Royal Centre restaurant. In her view, she saw that the review applicant loved the visa applicant and his children and is taking care of them by choosing fresh and varied foods.

67. The representative's post hearing submissions dated 31 January 2023 indicates that the error between Ms Phuong stating that the review applicant has returned to Vietnam more than 10 times since March 2016 and the visa applicant's relationship statement dated 29 March 2022 stating that it had been nine times starting in March 2016, *"...is an error on behalf of Ms Phuong and can be easy to mistake to make, however the Sponsor [the review applicant] instructs that she should have checked the statement properly before submitting it"*. In fact, Ms Phuong's statement states that it has been "more than ten times" if the intention of that statement was how many times that the review applicant has travelled to be with the visa applicant.

68. Additionally, Ms Phuong's statement provides little detail as to the nature of the parties' relationship save to say that the review applicant loves the visa applicant and his children (her nieces) and is taking care of them by choosing fresh and varied food. The Tribunal does not consider the provision of "fresh and varied food" as indicative of a genuine spousal relationship. Rather, it may be an indication that she does not want those that she cooks for to potentially get sick by serving them food that is not fresh. Additionally, it is reasonable to expect that the review applicant loves the visa applicant's daughters given that they in addition to being her stepdaughters, are also her nieces. The Tribunal gives this a small amount of weight and notes that Ms Phuong's statement does provide evidence that the parties represent themselves to others as being married.

- a. Dinh Thi Minh Hue, dated 23 November 2022, who is the sister-in-law of the review applicant. She is very close to the parties as they live in the same neighbourhood, see each other every day and have meals together. She has never seen the parties angry with each other and during the time the review applicant came back to Vietnam, she lived with the visa applicant, took care of him and his children. The visa applicant pampers the review applicant, helps her to take care of their home and children and treats her well. Ms Hue states that the parties' lives are simple but fulfilling and every morning she sees the visa applicant take the review applicant to the market and go jogging. She feels their love is *"completely simple, unobtrusive, flower,*

however on the contrary, they are like a couple of soulmates who are always next to each other, caring and understanding each other". Ms Hue knows "that both of them are looking forward to being together as soon as possible".

69. At the end of the hearing, the Tribunal raised concerns with this statement as it is contradictory. In one part it says the parties are living together and in the next it states that the parties are looking forward to being together as soon as possible which causes the Tribunal credibility concerns and doubt that the parties are actually living together. The representative in the post hearing submissions dated 31 January 2023 confirmed that Ms Hue's statement does mention that the parties are looking forward to being together as soon as possible and in the translation, this is what the statement says. However, the review applicant instructs that what this actually means is, that the couple want to be back together as soon as possible to be one family since the visa applicant has to travel back and forth so they are not living together permanently. The Tribunal presumes that there is a mistake in this submission, and what is meant is that the review applicant is travelling back and forth between Australia and Vietnam, however, if the parties' evidence is to be believed this has not been the case since March 2020. Therefore, the statement causes the Tribunal concerns about whether the parties are actually living together. Additionally, despite what the representative's submissions say, it is not up to the review applicant to interpret what Ms Hue did or didn't mean in her statement, and as she was not a witness in the review, the Tribunal did not have the opportunity to discuss her evidence with her.

70. The Tribunal finds that although Ms Hue's statement does provide evidence as to the nature of the parties' relationship, the Tribunal reduces the weight of this statement as the parties have been living together since 2020, so the parties are already together and have been for some time. The Tribunal queries as to how well Ms Hue knows the parties and therefore gives this statement little weight.

- a. Ho Thi Le Thuong dated 21 November 2022, who is an acquaintance and friend of the visa applicant, has known him for nearly 20 years as they have shops next to each other. She states that the review applicant has returned to Vietnam many times and when she does, they would drink coffee and have breakfast together and talk about everyday life. She feels that the review applicant is a warm person who cares for the visa applicant and takes care of his children and the visa applicant is a kind person who always listens and wants to share the difficulties in his life with the review applicant. She attended the parties' wedding at the Royal Centre restaurant on 6 February 2018. Since the outbreak of the pandemic until now, the review applicant has been in Vietnam with the visa applicant and has said that she wants to be so that they can take care of each other.

71. Given that the review applicant had stated that the visa applicant used to run a business but was no longer doing that, the Tribunal queried why Ms Thuong would say that her shop was next to the visa applicant's. The review applicant stated that he used to have a shop but in 2020 when COVID-19 broke out, that shop closed. The Tribunal asked why Ms Thuong would say that she had a shop next to the visa applicant's when it hasn't operated since 2020, to which the review applicant answered that she did not know her well, but it could be next to the house, so she could run the restaurant. The Tribunal also mentioned that Ms Thuong's statement indicated that the review

applicant drinks coffee and has breakfast with her and that she attended the parties' wedding, to which the review applicant responded that the visa applicant has a lot of friends and it is hard to remember them all. Ms Thuong's evidence that she has coffee and breakfast with the review applicant may have occurred, but not with any degree of frequency as the review applicant has made plain that she does not know her well and does not appear to remember her specifically. Although a person can indeed provide a witness statement and attest to a relationship even if they do not have a strong relationship with one of the parties, in this instance, the inconsistencies identified by the Tribunal cause the Tribunal to doubt the accuracy of the evidence. The Tribunal made clear to the review applicant that it had credibility concerns with the evidence because it appeared that a number of details were not correct in Ms Thuong's statement and that the review applicant does not really know her. The Tribunal gives this statement little weight.

72. Although a number of translated statements have been submitted in support of the parties' relationship, most of them are inconsistent with the parties' evidence. The Tribunal has concerns about the accuracy and credibility of a number of these statements. On balance, the Tribunal does not at the time of decision give the opinion of the parties' friends and acquaintances much weight.

73. At the time of application, there were no statements from the parties' friends or acquaintances on the Department file about the nature of the parties' relationship, however, the statements submitted to the Tribunal provide evidence which is applicable at the time of application, and the Tribunal provides these with the same weighting as at the time of decision for the reasons already mentioned.

74. *Is there any basis on which the persons plan and undertake joint social activities?*

75. The statements previously discussed indicate that the parties undertake joint social activities, however, because of the credibility concerns and inconsistencies between the statements and the parties' evidence, the Tribunal also has concerns about the accuracy of the social activities mentioned in these statements. This is particularly the case with Ms Thuong's statement when it is apparent that the review applicant does not know her so is unlikely to have socialised with her as set out in the statement.

76. The review applicant submitted photographs from 2016 to 2022. The individuals in the photographs are not identified and the photographs are not date stamped. The photographs (not an exhaustive list) show the individuals together at various locations, with others, dining with others, at the airport, on a plane, at the beach, at the Sriracha Tiger Zoo, in Bangkok, shopping together, visiting people, at various places in Singapore together (boarding passes also indicate that the parties flew from Ho Chi Minh City to Singapore and back on 1 June 2018 and returned on 3 June 2018), of the parties' first wedding anniversary, dining with others, shopping with others, having drinks with others. The Tribunal is satisfied that the parties have travelled together and socialised together and with others. The Tribunal also notes that the parties were previously related by marriage, and therefore, in this particular review, there is an alternate explanation for the socialisation with others given that the previous relationship of the parties was as in-laws. The Tribunal gives the photographs some weight at the time of decision and time of application.

77. The parties gave consistent evidence in relation to the other's favourite foods and foods that the other disliked. The Tribunal gives this some weight.

78. The visa applicant did not seem aware of the review applicant's allergies to either hot food or beer. At the end of the hearing, the Tribunal raised its concerns about this, particularly considering that the parties claim to have been living together since March 2020, which caused the Tribunal to have doubts about whether the parties' relationship is genuine and whether or not the parties are living together. According to the representative's submissions dated 31 January 2023, there was a misunderstanding of the question that the Tribunal asked with the interpretation being "what allergies do you have when you eat", which referred to what food the review applicant had allergies to causing the confusion for the visa applicant as "beer" is not a food allergy. Although the Tribunal does not necessarily accept the interpretation, the Tribunal does accept that there may have been some confusion because when the Tribunal initially put its concern to the visa applicant, he stated that he was confused because beer is for drinking and is not a food. For these reasons, the Tribunal does not attach any negative weight to this evidence.
79. In respect of the social aspects of the parties' relationship, at the time of application there is evidence that the parties represented themselves as being married as they had a wedding party with 54 guests, and photographs which tend to confirm this position. There were statements submitted at the time of decision which provide evidence that is applicable at the time of application as to the nature of the parties' relationship. Although it appears that the parties have socialised together, the Tribunal is not convinced that this is reflective of them being in a spousal relationship given that the parties were previously related by marriage. On balance, the Tribunal is not satisfied that the nature of the parties' relationship is reflective of the parties being in a genuine and continuing relationship.
80. At the time of decision there are a number of statements submitted that indicate that the parties continue to represent themselves as being married. Although many statements were submitted by the review applicant, there are credibility concerns and inconsistencies with those statements and the parties, and little evidence as to the nature of the parties' relationship. The nature of some of the inconsistencies is of concern to the Tribunal as it causes the Tribunal to doubt whether the statement makers know both parties as stated and socialise with them as claimed. Some of the statements also cause the Tribunal concerns as to whether the parties are currently living together as the parties' claim. Despite photos of the parties undertaking various social activities together and with others at various locations, the Tribunal is not convinced that this is necessarily reflective of them being in a spousal relationship but does acknowledge that the parties have spent time together and travelled together. On balance, the Tribunal is not satisfied that the nature of the parties' relationship is reflective of the parties being in a genuine and continuing relationship.

81. *Nature of persons' commitment to each other*

82. The Tribunal has considered evidence of the nature of the persons' commitment to each other, including the duration of the relationship, the length of time the parties have lived together, the degree of companionship and emotional support that the persons draw from each other and whether the persons see the relationship as a long-term one.

83. *What is the duration of the relationship?*

84. The visa applicant's translated statement of relationship dated 20 September 2018 on the Department file indicates that the parties first met in November 1989 when the visa applicant was married to the review applicant's sister, however, they hardly talked, had their own families and the review applicant moved to Australia. The parties reconnected on 14 March 2016 at the review applicant's birthday celebration, which was held at the visa applicant's ex-wife's house; they had the chance to talk, and after the birthday celebration, he was attracted to her, and asked her to have breakfast and go to a café together. After that time,

the review applicant returned to Australia, and they maintained contact by phone. The statement says that:

85. [T]he second time Hanh [the review applicant] went to Viet Nam is on 9th January 2017. We went to Dai Nam, Suoi Tien. As it was the time of Lunar New year in Vietnam, we had holiday break so we spend time [sic] together going to various places. I wanted Hanh [the review applicant] to feel the rush but peace here. I and [sic] Hanh [the review applicant] send [sic] time to learn more about each other. After those trips, I confessed my feeling to Hanh and she also told me the same thing in return. Therefore, we began our relationship before Hanh [the review applicant] went back to Australia on 7th February 2017.

86. At the hearing, the review applicant testified that the visa applicant was still sleeping at her sister's (the visa applicant's ex-wife's) house at the time of her birthday party, but they were separated. Once the parties fell in love, there were issues in relation to family members rejecting the parties' relationship. According to the review applicant, she has seven siblings, most of whom rejected the relationship and she had to convince her parents and other siblings to agree to the parties' relationship. However, when asked whether the visa applicant's ex-wife attended the wedding (the review applicant's sister), the review applicant stated that she was invited, but did not attend, as she was embarrassed but she did not reject the parties' relationship. The Tribunal considers this to be unlikely.

87. The Tribunal asked the review applicant three times when the review applicant's relationship with the visa applicant officially started, with the review applicant seemingly being reluctant to answer. Eventually, the review applicant stated that the parties' relationship started in 2017 when the parties travelled to Thailand in October 2017.

88. The Tribunal then raised the following inconsistencies between the review applicant's oral evidence and the:

- a. visa applicant's statement dated 20 September 2018 which stated "...we began our relationship before Hanh [the review applicant] went back to Australia on 7 February 2017"; and
- b. visa applicant's statement dated 29 November 2022 (which is inconsistent again), where he stated that the parties officially started dating on 6 March 2017, though the:
 - i. Department file indicates that the visa applicant was not divorced from the review applicant's sister until 4 April 2016; and
 - ii. the review applicant's birthday party was not until 14 March 2016 when the review applicant's statement on 20 September 2018 states that the parties had a chance to talk to each other.

89. The Tribunal indicated it had credibility concerns about the inconsistency of the oral evidence of the review applicant and the written evidence of the visa applicant.

90. According to the representative's post hearing submissions dated 31 January 2023, there was a lot of confusion from the review applicant when asked about when the parties' relationship officially started. The representative claims that the interpreter had asked the review applicant "when did you love each other", which is not the same question that the Member was asking, which the review applicant has instructed caused a lot of misunderstanding as she thought the question related to when the parties started falling for each other, on her birthday in March 2016 as opposed to when the parties first became official in November 2017 which was when the visa applicant proposed to her in Thailand. The Tribunal notes that this was not raised by the representative who appeared on the

review applicant's behalf at the hearing either during the oral evidence, after the short adjournments which occurred throughout the hearing, or when the Tribunal put this concern to the review applicant. The Tribunal also notes, that the question that the Tribunal initially asked the review applicant was when her relationship with the visa applicant officially started, her answer to which was that the parties had their wedding in 2018. The Tribunal then stated that was not what the Tribunal had asked, it asked when her relationship with the visa applicant officially started, and the review applicant stated that the parties started to live together. The third time, the Tribunal repeated that the review applicant had not answered what had been asked, and again asked when the review applicant's relationship with the visa applicant officially started, to which she answered in 2017, when the visa applicant proposed to her. The Tribunal considered whether there may have been interpretation issues at play. However, given that there was no submissions whatsoever by the representative as mentioned above nor were there any issues raised by the review applicant at the end of her evidence when the Tribunal asked if the review applicant wanted to say anything further or when the Tribunal put its concerns to her, the Tribunal does not find that there was evidence of interpretation issues. Given the answers to the questions put to the review applicant and the review applicant's answers, the representative's explanation is not consistent with what the representative is now submitting, and the Tribunal does not accept the explanation.

91. Additionally, there was no indication of interpretation issues, and the review applicant appeared to be selective in terms of what she answered in this regard. Additionally, the representative at the hearing, also did not make any submissions that there were interpretation issues in this regard.
92. The review applicant then stated that she met the visa applicant on 6 March 2016 (which is prior to her birthday party and inconsistent with visa applicant's translated statement on the Department file dated 20 September 2018) and they had a bit of affection towards each other and went to Thailand in October 2017 when the visa applicant proposed. The Tribunal indicated that it had not asked about the engagement, and the question that the Tribunal had asked was when the relationship started. The review applicant stated that the affection started with each other in March 2016. At that point the Tribunal indicated that it had been told a number of different dates and did not want to know when the affection started, but when the relationship started. The review applicant stated that they started their love in January 2017. The Tribunal queried whether what the review applicant was now saying was that the relationship did not start in October 2017 and instead started in January 2017. The review applicant agreed that the parties' relationship started in October 2017 when the visa applicant had proposed to her. The Tribunal stated that it had concerns about the credibility and inconsistency in the oral evidence and the statement submitted by the visa applicant, and that the Tribunal was also concerned about the evasiveness of the review applicant. The representative in the post hearing submissions dated 31 January 2023, explained that the review applicant went to Vietnam on 28 October 2017 which is why when asked about the Thailand trip and the proposal, the review applicant flew overseas to meet the visa applicant for the purpose of being together and it was a mistake with the dates.
93. However, the visa applicant's relationship statement dated 29 December 2022, indicates that during a trip to Thailand from 2 November 2017 to 7 November 2017, the visa applicant proposed to the review applicant. The review applicant gave oral evidence that the visa applicant proposed in October 2017 during a trip to Thailand in the hotel. The Tribunal raised the inconsistency with the review applicant and expressed concern because generally an engagement is an important relationship milestone and date and occasion that people remember. Although the stress of the hearing may mean that parties forget the day, the Tribunal considers it unlikely that parties in a genuine and continuing relationship would forget the month. In response, after telling the Tribunal on more than one occasion that the date of the parties' engagement was October 2017, the review applicant then changed her

evidence and stated that she had flown from Australia to Vietnam on 28 October and several days later they went to Thailand from 2 November to 7 November. The Tribunal queried why the review applicant had told the Tribunal that the visa applicant had proposed to her in October. The review applicant apologised, stated that she got it mixed up, and stated that the parties had travelled to Thailand at the beginning of November 2017. The representative's post hearing submissions dated 31 January 2023 indicate that there was a genuine mistake with the dates as the review applicant flew overseas to meet the visa applicant in November. Although that may be the case, for the reasons already mentioned, the Tribunal has concerns about the consistency of the review applicant's evidence, considers it reasonable that parties be consistent on at least the month of their engagement given it is an important relationship milestone and accordingly gives this negative weight as to the parties being in a genuine and continuing relationship.

94. The parties were married on in February 2018. At the date of application the parties had been in a relationship for approximately one year (though the Tribunal has concerns about the inconsistency of the parties' evidence as to when the relationship started) and had been married for approximately a month. Due to the inconsistency in the evidence as to when the parties' relationship commenced and the small amount of time between the wedding and the date of application, the Tribunal gives this a small amount of weight. At the time of decision the parties had been in a relationship for approximately six years and married for five years. The Tribunal gives this some weight.
95. *What is the length of time the parties have lived together?*
96. On 7 December 2022, the review applicant submitted her translated statement which states that because "...of the Covid 19 pandemic, I returned to Vietnam on 17th of March 2020 and stay until now. I am worried for my husband who was alone through the time of epidemic, so I wanted to stay in Vietnam so that we could take care of each other through the pandemic. After the Covid [sic] was under control, instead of returning to Australia, I decided to stay in Vietnam because I did not want to leave my husband. We are old; moreover, my husband often gets sick. Therefore, I want to spend more time taking care of him". At the time of decision, the parties claim to have been living together for almost three years. The Tribunal gives this weight.
97. At the time of application, the review applicant was living in Australia and the visa applicant was living in Vietnam, and the review applicant was travelling from Australia to Vietnam to visit him. The Tribunal gives this weight.
98. *What is the degree of companionship and emotional support that the persons draw from each other?*
99. The parties gave consistent evidence in relation to the medication that the visa applicant is currently taking. The Tribunal gives this some weight.
100. The review applicant testified that she had the same interests as the visa applicant, to look after the birds in the cage, grow flowers in the yard and talking about the day and night. The visa applicant stated that the parties like to garden and plant trees; the review applicant likes to make cakes and the visa applicant likes to have birds. The parties also gave generally consistent evidence in what they enjoyed eating. The Tribunal gives this some weight.
101. The parties gave generally consistent oral evidence that in respect of things that the parties like to do together, they do the gardening and prepare food though the review applicant cooks the meals. The Tribunal gives this some weight.

102. A selection of chat records was submitted by the review applicant from 2017, 2018 and from December 2018 to February 2019 and from February 2019 to March 2020. It is not clear on their face who they are between; they are not in English and accordingly they provide the Tribunal with no indication of the degree of companionship or emotional support between the parties. The Tribunal gives them little weight.
103. The visa applicant's relationship statement dated 20 September 2018 indicates that when the review applicant's father passed away in 2018 he was by her side showing her support and helping her to overcome the pain and sorrow for the loss of her father. The Tribunal gives this some weight.
104. The review applicant testified that usually the parties go to bed at 9pm but sometimes the visa applicant goes out with his friends and "goes overboard" and comes home late. The review applicant gets upset and the visa applicant comforts her, and he says he will not do that again. The Tribunal gives this a small amount of weight in that it indicates that the parties have worked through an issue and the visa applicant has committed to a change. The review applicant stated that she had provided the visa applicant comfort as he was upset due to a work matter which he communicated to her on arriving home. The review applicant tried to calm him down by telling him that the parties were old, those upsetting him were young and that the visa applicant needed to calm down. The Tribunal gives this some weight.
105. The visa applicant testified that he provided emotional support to the review applicant when the review applicant was in Vietnam as the review applicant would miss her daughter or a relative in Australia, she would worry a lot and the visa applicant would encourage her because that is the same situation everywhere in the world so there is nothing to worry about. The Tribunal gives this some weight.
106. The visa applicant stated that the review applicant would give him support when he was sad, and if he had any difficulties, she encouraged or supported him. The Tribunal gives this a small amount of weight.
107. *Do the persons see the relationship as a long-term one?*
108. In terms of the parties' plans for the future, the review applicant testified that she had made some mistakes, but used to work and pay tax in Australia, so she should have a good life in Australia with the visa applicant and his daughter. The Tribunal clarified that it had asked the review applicant what her plans are with the visa applicant for the future. The review applicant stated that the parties planned to buy a house in Australia, they did not want to buy any more houses in Vietnam and want to live peacefully in Australia in a suburb close to her two daughters. The visa applicant will enrol to study English and he will try and find a job suitable for his "capacity". However, the visa applicant testified that their future plans were to ask the Tribunal to consider their case and be reunited in Australia soon, because he likes Australia, it is a beautiful country with a good atmosphere and medical services, it is a civilised country and that is where the parties want to spend their time when they are at pension age. The Tribunal raised its concerns about the parties' limited future plans.
109. If the visa applicant's visa was refused, the review applicant stated that she could not be far away from the visa applicant and would try all possible ways to bring him to Australia. The Tribunal notes in this regard, that the parties claim to be living together in Vietnam. The visa applicant testified that in the event he could not come to Australia, the parties would go to the countryside, get a farm, do some gardening, have some animals, and stay together because they love each other and want to spend their old age together. The Tribunal noted that the parties' evidence was not consistent, and that the review applicant had not mentioned any plans to be in Vietnam, to which the visa applicant testified that the review

applicant did not have any plans with their lives in Vietnam, because she wants to bring him to Australia, because it is a beautiful country with “high technique” of medicine. The review applicant is waiting to share her life with the visa applicant. The Tribunal indicated that it thought that the parties would have discussed what would have occurred if the visa was not granted. The visa applicant stated that if he cannot go to Australia, both parties would be very sad, but if that occurred he again repeated his evidence about purchasing some land in the countryside. In his opinion Australia is a perfect country with a perfect landscape and good medical facilities. At the end of the hearing the Tribunal raised concerns about the inconsistency in the parties’ evidence.

110. The representative’s post hearing submissions dated 31 January 2023, state that the review applicant had instructed that she wants to live in Australia with the visa applicant and knows that it is better for their relationship if they were able to permanently move to Australia (the Tribunal notes that no explanation was provided as to how it would be better for the parties’ relationship). The review applicant instructed that the visa applicant has told her that he is happy to live in Vietnam if there is no chance of his visa being granted, but that is not what the parties want for the future. Because the parties have now had a chance to discuss their respective evidence, the Tribunal gives these submissions little weight. The Tribunal has concerns about whether the parties’ relationship is genuine and continuing because:

- a. the visa applicant’s visa had already been refused by the delegate, and the nature of this review could result in the delegate’s decision being affirmed;
- b. that eventuality did not appear to be discussed between the parties; and
- c. the parties gave inconsistent evidence if the visa applicant’s visa was not granted as to what would occur, with the review applicant making no mention of remaining in Vietnam; and
- d. the bulk of the reasons for the visa applicant coming to Australia revolved around the benefits of Australia as a country rather than his relationship with the review applicant.

111. For these reasons, the Tribunal affords the parties’ inconsistent evidence negative weight of the parties’ relationship being genuine and continuing and the parties having a mutual commitment to a shared life together.

112. The review applicant stated that she would like the visa applicant’s youngest daughter to live in Australia, and the visa applicant would have to apply for his youngest daughter to travel with him. When the visa applicant gets his visa to stay permanently in Australia he will apply for a visa for his daughter to live in Australia, though there is no evidence that any such step has been taken. The Tribunal noted that this was of concern as the divorce order on the Department file indicates that the visa applicant has custody of his youngest daughter until she reaches maturity, and the Tribunal was not sure how he would look after her if his visa was granted and she remained in Vietnam while he went to Australia. The review applicant was clear that the parties wanted the visa applicant’s visa to be granted first and his daughter would be sponsored next, and in the interim she would stay in Vietnam with her sister and grandmother. The Tribunal expressed concern that there was no indication from the evidence given that there were any plans in place to bring the visa applicant’s daughter to Australia despite the Vietnamese court order regarding custody. The Tribunal expressed its concerns about the accuracy of the divorce document or the evidence given. The Tribunal notes that no post hearing submissions were provided by the representative in relation to this matter.

113. The visa applicant's statement dated 20 September 2018 on the Department file states that the parties are doing their best to buy and own their own house together and build a family together in Australia. Based on the parties' inconsistent oral evidence as to how much they have saved for this purpose, the Tribunal gives this evidence little weight.
114. In terms of the nature of the parties' commitment to each other, at the time of application the parties had been in a relationship for approximately one year and married for approximately one month, though the review applicant's oral evidence and visa applicant's written evidence was inconsistent as to when the parties' relationship commenced and the month of the parties engagement (the Tribunal afforded negative weight to the parties being in a genuine and continuing relationship in relation to the inconsistent engagement evidence). The parties for the most part were living in separate countries with the review applicant travelling from Australia to Vietnam to visit the visa applicant. Chat records were submitted; however, they were not in English and it was not clear who they were between so the Tribunal cannot derive any evidence of companionship or emotional support from those records. There is limited evidence of the degree of companionship and emotional support that the persons draw from each other, and limited evidence that the parties see the relationship as long-term. On balance the Tribunal does not find the nature of the parties' commitment to each other as being indicative of the parties being in a genuine and continuing relationship or having a mutual commitment to a shared life.
115. At the time of decision, the parties have been in a relationship for almost six years and married for almost five years which the Tribunal attributes weight to. The parties have been living together in Vietnam for almost three years which the Tribunal attributes weight to – though the Tribunal reiterates the concerns it has based on the statements about whether the parties are in fact living together. There is evidence that the parties have common interests and the things they like to do together. Chat records were submitted; however, they were not in English and accordingly the Tribunal was not able to understand them or establish any degree of companionship or emotional support from them. The parties gave some evidence of emotional support and the parties have limited future plans. Despite the divorce order on the Department file that grants custody to the visa applicant for his youngest daughter until she reaches maturity, it seems that no plans have been made in relation to her if the visa is granted – which causes the Tribunal concern either with the divorce document or the parties' evidence. Additionally, the parties gave inconsistent evidence as to what would occur if the visa applicant's visa were not granted, with the review applicant making no mention of remaining in Vietnam and the visa applicant focusing on the benefits of coming to Australia as opposed to the relationship with the review applicant to which the Tribunal attributed negative weight. On balance, at the time of decision, the Tribunal does not find the nature of the parties' commitment to each other as being indicative of the parties being in a genuine and continuing relationship or having a mutual commitment to a shared life together.

116. **CONCLUSION**

117. As already stated, the Tribunal is satisfied that the parties are validly married as required by s 5F(2)(a) of the Act.
118. Additionally, although the Tribunal has given:
- a. at the time of decision a small amount of weight for the parties sharing household expenses;
 - b. a small amount of weight in relation to the joint responsibility for the care and support of a child (that is, the visa applicant's child and the review applicant's niece Ms Nguyen);

- c. some weight to the parties' living arrangements at the time of decision in that the parties live together in Vietnam with two of the visa applicant's daughters and the visa applicant's mother;
- d. some weight at the time of decision and the time of application of the parties representing themselves to others as being married to each other;
- e. some weight to the photographs of the parties which indicate that they have socialised together and with others and travelled at the time of application and time of decision;
- f. some weight to the consistent evidence of the parties being able to describe each other's favourite foods and foods they dislike;
- g. weight to the parties being in a relationship for approximately six years and married for five;
- h. weight that the parties claim to have been living together in Vietnam for almost three years and weight prior to that of the review applicant travelling to Vietnam to see the visa applicant;
- i. some weight in relation to the consistent evidence as to the visa applicant's medication;
- j. some weight as to the parties' common interests and what they like to do together; and
- k. some weight as to the emotional support that the parties derive from each other at the time of decision;

119. there are other matters that weigh more heavily against the relationship than those matters which weigh in favour of it. Although some of these matters may appear to be minor or insignificant, cumulatively, and due to the large number of matters, they become significant. Additionally, the Tribunal has also had numerous credibility and inconsistency concerns with the parties' evidence and in relation to statements in support of the parties' relationship. The matters which collectively weigh more heavily against than those in favour of the relationship, include the:

- A. parties giving inconsistent evidence as to the amount they have saved to purchase a house;
- B. the visa applicant giving inconsistent evidence about the review applicant's living arrangements at the time of application;
- C. Ms My's statement (the visa applicant's younger sister) in support of the parties' relationship being inconsistent with the evidence that the parties gave about their current living arrangements and sharing of housework;
- D. Mr Thu's statement (the visa applicant's younger brother) which indicates that the review applicant cannot stay in Vietnam because of her work and life in Australia, which is inconsistent with the review applicant's evidence that she does not have a job in Australia;
- E. Ms Hue's contradictory statement which in one part indicates that the parties are living together and then states that the parties are looking forward to seeing each

other as soon as possible despite the parties claiming to have lived together in Vietnam since March 2020;

- F. Ms Thoung's statement which has a lot of inconsistencies compared with the parties' evidence. Additionally, despite what is said in the statement it appears that the review applicant does not know her. In this respect, the Tribunal has credibility concerns with the evidence;
- G. the evasiveness of the review applicant when being asked when the parties' relationship started and the inconsistency between the visa applicant's written evidence as to the relationship start date and the numerous different dates provided by the review applicant including a date prior to her birthday party (which is when the parties' claim to have reconnected) which causes the Tribunal credibility concerns;
- H. inconsistent evidence about the month that the parties became engaged, and then the review applicant changing her evidence. An engagement is normally a momentous occasion in a person's life, and given the nature of this application, is a date that the Tribunal considers would have been reasonable for the review applicant to know at least the month;
- I. credibility issues with the review applicant's evidence when initially she stated that all the parties' children attended the parties' wedding and then changed her evidence to only one of her children and one of her husband's children attended;
- J. concerns about the parties' limited future plans;
- K. inconsistent evidence as to what would occur if the visa applicant's visa was not granted which for the reasons already mentioned the Tribunal afforded negative weight to the parties being in a genuine and continuing relationship;
- L. concerns about the lack of plans in place in terms of what will occur to the visa applicant's younger daughter who the visa applicant has custody of until the age of maturity. This causes the Tribunal concerns about the parties' evidence or the underlying divorce document.

120. For these reasons, with respect to the reg 1.15A(3) matters the Tribunal is not satisfied that on balance there is sufficient evidence at the time of this decision, that the parties:

- a. had a mutual commitment to a shared life as husband and wife to the exclusion of all others, as required by s 5F(2)(b) of the Act; and
- b. had a genuine and continuing relationship, as required by s 5F(2)(c) of the Act; and
- c. lived together and did not live separately and apart on a permanent basis, as required by s 5F(2)(d).

121. On the basis of the above the Tribunal is not satisfied that the requirements of s 5F(2) of the Act are met at the time the visa application was made or at the time of this decision. Therefore the visa applicant does not meet cls 309.211 or cl 309.221 of Schedule 2 to the Regulations. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.

DECISION

122. The Tribunal affirms the decision not to grant the visa applicant a Partner (Provisional) (Class UF) visa.

Brygyda Maiden
Member

ATTACHMENT - Extract from *Migration Regulations 1994*

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).